ships' decision. I can only add that it seems to be true also that partners, employees, employers and creditors had existed if I may venture to say, a very long time ago and one could scarcely imagine that this reason had not also affected the minds of those Judges who had the misfortune of dealing with the same problem before. In any event their Lordships were prompted to say that for the reasons they gave the compensation for loss of consortium, if at all, should be nominal.

Coming now to the problem before us, Counsel for the appellant in seeking to vary the order of the learned President, as I said earlier seem somewhat to be obliged to say that in the light of the *Robertson's* case that the amount given was under the circumstances excessive. In viewing our own situation I do not pretend to be a social scientist to say that I know what is the real answer to the problem before me. I do not pretend to know also whether the Malaysian society had gone through the social transformation that it can safely be said to have reached such heights of sophistication akin to that in a western society. Although the social upheavals and habits that one sees in the western society apparently are also fast becoming that of ours I would say nevertheless that ours on the whole is a different type of society altogether. It is not that women are not emancipated or that the men are still undernourished with the western ideas or that the western culture has not reached our doors. It simply means as Mark Twain said East is East and West is West and never shall the twain meet. Against our way of life for different religious background and different culture the Western way of life does not easily fit into the life pattern. It may be we are slow in accepting it, I don't know. May be our outlook towards life is different. Thus marriage to most is a very sacred thing. It is an occasion of solemn vow to dedicate life to the wife alone. The loss of consortium to a true Muslim, would as far as I can venture to speak for them, mean loss of physical and moral companion which cannot be replaced in any form of manner. It is true a Muslim can remarry but the replacement may not be the same and cannot be the same, because marriage then is to a different person altogether. And I would say that what has been said of the wife must equally apply also to the husband. I would say thus that in so far as the rule regarding compensation for loss of consortium is concerned, the decision of *Robertson* v. *Turnbull* must with deference to their Lordships in that case therefore be applied here with reservation lest an injustice be done. It should in my humble view in the light of what I said, be distinguished, to allow the plaintiff not only a nominal compensation but such assessment of damages as would compensate him for the loss of the consortium. The learned President had considered the matter carefully and fairly along the same rationale as I have urged, and given a proper award of $3,000/-. I do not see any reason for disturbing that finding. In making the award he had not only considered the loss to the plaintiff of her consortium but the loss to him of her companionship in his social commitment to society which the state of her mental health had occasioned.

As far as the claim for the loss of profit for 6 weeks at $15/- per day, I do not think I would say more than that Counsel for the appellant had not addressed me on the point. I can only assume that he had abandoned that ground. In any event I think $15/- per day is fair judging by my experience in previous cases of what taxi drivers normally earn.

I would dismiss the appeal therefore with costs with this observation that I think this matter is important enough for further deliberation and discussion by the highest judicial authority.

Appeal dismissed.

Solicitors: *Lovelace & Hastings; K.L. Rekhraj & Co.*

PUBLIC PROSECUTOR v. ONG TEE

[A. Cr. J. (Ajaib Singh J.) August 8, 1980]

[Seremban – Port Dickson Criminal Appeal No. 22 of 1976]

Dangerous Drugs – Heroin – Possession of 1.25 gms. of light brown powder found to contain 0.47 gms. of heroin – Chemist's report – Whether defective – Chemist need not state further heroin as found came within definition of Dangerous Drugs Ordinance, 1952 – Dangerous – Drugs Ordinance 1952, s. 12(2).

Dangerous Drugs – Heroin – Absence of technical definition in Dangerous Drugs Ordinance, 1952 – Emergency (Essential Powers) Ordinance, 1971.

This was an appeal against the decision of the learned President of the Sessions Court whereby he had acquitted and discharged the respondent on September 15, 1976 without calling for the defence on a charge of being in possession of a dangerous drug under section 12(2) of the Dangerous Drugs Ordinance 1952.

On March 15, 1976 the respondent was found in possession of 1.25 gms. of light brown powder which on analysis by the chemist was found to contain 0.47 gms. of heroin and this was the amount of heroin stated in the charge. In his report the chemist had stated that he had analysed the 1.25 gms. of the light brown powder which had been sent to him by the police and had found it to contain 0.47 gms. of heroin. The learned President held that the failure to state in the chemist's report that the contents were heroin within the meaning of the Dangerous Drugs Ordinance was fatal.

Held, allowing the prosecution's appeal: (1) heroin is not technically defined in the Dangerous Drugs Ordinance nor is it in the Dangerous Drugs Act 1952 (Revised 1980). Therefore in the absence of any technical definition of heroin in the Dangerous Drugs Ordinance the Chemist Report stating that it came within the definition of heroin without stating that it came within the definition of heroin under the Dangerous Drugs Ordinance was not fatal but was sufficient for the purpose of proving that the light brown powder found in possession of the respondent contained a dangerous drug namely heroin to the extent of 0.47 gms;

(2) a *prima facie* case had been made out for the defence to be called. The order of acquittal and discharge should be set aside.

Case referred to:

(1) *Ho Kiat Swee* v. *R.* [1947] M.L.J. 159.

CRIMINAL APPEAL.

Razalli bin Hassan (Deputy Public Prosecutor) for the appellant.

John Fernandez for the respondent.

Ajaib Singh J. (delivering oral judgment): This is an appeal against the decision of the learned President of the Sessions Court whereby he had acquitted and discharged the respondent on September 15, 1976 without calling for the defence on a charge of being in possession of a dangerous drug under section 12(2) of the Dangerous Drugs Ordinance 1952.

On March 15, 1976 the respondent was found in possession of 1.25 grammes of light brown powder which on analysis by the chemist was found to contain 0.47 grammes of heroin and this was the amount of heroin which was stated in the charge. The main ground on which the learned president acquitted and discharged the respondent was that the chemist's report produced by the prosecution was defective. In his report the chemist had stated that he had analysed the 1.25 grammes of the light brown powder which had been sent to him by the police and had found it to contain 0.47 grammes of heroin. The learned President held that the failure to state in the chemist's report that the contents were heroin within the meaning of the Dangerous Drugs Ordinance was fatal. In support of his decision the learned President cited the case of *Ho Kiat Swee* v. *Rex*[1] where in a short judgment on appeal in a case of possession of chandu Jobling J. had this to say –

> "The certificate in this case is an extremely unsatisfactory one. It is the only evidence for the Prosecution that the article found on the accused's premises is Chandu within the meaning of this term in the Opium and Chandu Proclamation No. 43 of 1946.
>
> I think it is a sufficient certificate of a Chemist of the Department of Chemistry and so far complies with the provisions of the law but it does not show that the chemist who signed the certificate analysed the articles sent to him or any one of them. Further it does not show that when he refers to the articles as Chandu he was aware of the technical definition of the word "Chandu" in the proclamation (paragraph 23) and was satisfied that it came within that definition.
>
> In the circumstances I take the view that the Prosecution has not proved its case in the matter and my only course is to quash the conviction and the conviction is quashed accordingly."

Ho Kiat Swee was decided on the particular facts of the case and with particular reference to the technical definition of chandu which under the Opium and Chandu Proclamation of 1946 is as follows:–

> " 'chandu' means the product of opium or any preparation in which opium forms an ingredient obtained by a series of special operations, especially by dissolving, boiling, roasting and fermentation designed to transform it into an extract suitable for consumption and includes chandu dross and re-prepared chandu dross but does not include –
>
> a) any of the alkaloids or salts of the alkaloids of opium, or
>
> b) opium or any preparation in which opium forms a part which is used or intended to be used by a chemist only in the preparation of a prescription signed by a duly qualified medical practitioner or veterinary surgeon in the exercise of his profession."

There were two serious defects in the prosecution case against *Ho Kiat Swee*. First there was no indication in the chemist's report that the articles were analysed at all by the chemist. Secondly chandu having been technically defined as opposed to its ordinary common meaning the prosecution had to adduce sufficient evidence to show that the chandu concerned came within the definition of chandu in the Opium and Chandu Proclamation. Merely referring to the articles as chandu in the chemist's report was not enough and

fell short of proof that the articles constituted chandu as defined. In the circumstances the conviction recorded in the case of *Ho Kiat Swee* was with respect rightly quashed on appeal.

The position is quite different in the present case before me. Heroin is not technically defined in the Dangerous Drug Ordinance nor is it now in the Dangerous Drugs Act 1952 (Revised – 1980). It had a somewhat technical definition at one time until the First Schedule to the Dangerous Drugs Ordinance was amended on February 18, 1971 by the Emergency (Essential Powers) Ordinance No. 82 of 1971. Before the amendment heroin was listed in the First Schedule in item 11 as "Diacetylmorphine (commonly known as diamorphine or heroin) and the other esters of morphine, and their respective salts." After the amendment it is now just plain heroin as one of the dangerous drugs listed in the First Schedule unlike cannabis or raw opium for example which have technical definitions apart from merely being listed as cannabis and raw opium in the First Schedule.

In the present case the chemist's report states that the chemist had analysed the 1.25 grammes of the light brown powder and that he had found it to contain 0.47 grammes of heroin. This in my view was sufficient and there was no need to state further in the report that the heroin as found came within the definition of the Dangerous Drugs Ordinance. Heroin is fairly well-known and it is listed as a dangerous drug. Therefore in the absence of any technical definition of heroin in the Dangerous Drugs Ordinance the chemist report stating that after analysis the chemist had found heroin in the powder without stating that it came within the definition of heroin under the Dangerous Drugs Ordinance was not fatal but was sufficient for the purpose of proving that the light brown powder found in possession of the respondent contained a dangerous drug namely heroin to the extent of 0.47 grammes.

The heroin was found in possession of the respondent and together with other evidence adduced against him the prosecution had made out a *prima facie* case for the defence to be called. The order of acquittal and discharge is set aside. As the learned President who heard this case has been transferred I direct that there be a trial *de novo* by the succeeding president.

Acquittal & Discharge set aside.

Solicitors: *Kong & Fernandez.*

ASIA TELEVISION LTD. & ANOR. v. VIWA VIDEO SDN. BHD.

[O.C.J. (Ajaib Singh J.) August 15, 1983]
[Ipoh – Civil Suit No. 474 of 1983]

Copyright – Censorship laws – Cinematograph films in video tapes uncensored – Tapes "tainted with illegality" and had no copyright – Plaintiff therefore had no position to maintain any action for infringement of copyright in respect of these films – Copyright Act 1969 – Films (Censorship) Act 1952

Practice & Procedure – Ex parte application for "Anton Piller" order obtained by plaintiff to restrain defendants from reproducing, disposing etc. cinematograph films in the form of video tapes over which plaintiffs claimed copyright – Application by defendants to set aside injunction allowed

On June 10, 1983 the plaintiff obtained an interim injunction in the nature of an "Anton Piller" order on an *ex parte* application restraining the defendants from reproducing, disposing, renting or hiring out for private or domestic viewing or publicly exhibiting cinematograph films in the form of video tapes over which the plaintiffs claimed copyright. The defendants were also ordered to give a full account of all the infringing copies of the video tapes in their possession, custody or control and to deliver and surrender the said tapes to the plaintiffs. The defendants had applied to set aside the injunction and for the return of the video tapes and the 24 record cards. The defendants contended, *inter alia*, that the plaintiffs had no copyright in the cinematograph films contained in the video tapes because the plaintiffs had infringed the provisions of the Films (Censorship) Act 1952.

Held: (1) when the cinematograph films contained in the video tapes in the present case were published in Malaysia within 30 days of their publication in Hong Kong, no certificate of approval had been issued in respect of the films by the Board of Film Censors. The publication of the said films in the video tapes was therefore unlawful, illegal and constituted an offence punishable under the Film (Censorship) Act;

(2) the said cinematograph films contained in the video tapes belonging to the plaintiffs had no copyright. The plaintiffs were thus in no position to maintain any action for infringement of copyright in respect of these films;

(3) the interim injunction should be set aside and the 84 tapes and the 24 record cards be returned to the defendants forthwith.

[The following authorities were cited in argument: *Anton Piller* v. *Manufacturing Processes Ltd. & Ors.* [1976] 1 All E.R. 779; *Victorian Daylesford Syndicate* v. *Dott* [1905] 2 Ch. 624; *Anderson Ltd.* v. *Daniel* [1924] 1 K.B. 138; and *St. John Shipping Corp.* v. *Joseph Rank Ltd.* [1957] 1 Q.B. 267]